Arizona Medical Board

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DRAFT MINUTES FOR OFFICE BASED SURGERY SUBCOMMITTEE MEETING Held on Thursday, December 13, 2007 9535 E. Doubletree Ranch Road · Scottsdale, Arizona

Subcommittee Members
William R. Martin, III, M.D., Chair
Ram R. Krishna, M.D.
Douglas D. Lee, M.D.

Call to Order
The meeting was called to order at 8:33 a.m.

Roll Call
The following Subcommittee Members were present: Dr. Krishna, Dr. Lee and Dr. Martin.

Call to Public
Jeff Mueller, M.D., President of the Arizona Society of Anesthesiologists (ASA), commented on a letter ASA provided to the Subcommittee. Mary Wojnakowski, President of Arizona Association of Nurse Anesthetists (AANA), commented on a letter submitted to the Subcommittee regarding the rescue language that had been included in R4-16-702(A)(3). Ms. Wojnakowski stated the AANA's concern was that the language presented placed a restriction on Certified Registered Nurse Anesthetists (CRNAs). Ms. Wojnakowski stated the AANA felt this language would be a disincentive for physicians utilizing CRNAs in the office based setting and that AANA subsequently proposed alternate language that would impart the same degree of responsibility on the physician for the care of their patient as well as the providers that they were using in the office, but not place additional restrictions on the scope of practice of CRNAs that is not within the purview of the state Board of Medicine to regulate. Ms. Wojnakowski requested the ending three words "by the physician" be stricken or have "or health care professional" added on to the end of R4-16-702(A)(3)(d). Karen Connell from Mutual Insurance Company of Arizona (MICA), commented on the language MICA submitted to the Subcommittee. Ms. Connell stated MICA agrees with having "by the physician or health care professional" added to the end of the section.

Marvin Borsand, M.D., President of Arizona Cosmetic Surgery, and Brandon Coakley, from Arizona Association of Nurse Anesthetists, observed the meeting and were available for comment.

Approval of Minutes

MOTION: Dr. Krishna moved to approve the May 29, 2007 Meeting Minutes.
SECONDED: Dr. Lee
VOTE: 3-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

Consideration of R4-16-702(A)(3) Regarding Office Based Surgery Rules
Dr. Martin opened for comments from Subcommittee Members regarding R4-16-702(A)(3). Dr. Lee stated that Board members have wrestled with several cases over the past few years with questions about who ultimately is responsible for the care of the patient when a pair of professionals work within a team care setting, specifically cases with optometry, midwifery, and most recently physician assistants. In discussions of these cases the Board has generally held that the physician is the person that patients and the public in general tend to see as the person responsible for their medical care. In some unfortunately high profile cases before the Board recently, the public often seems unaware of all the various pairs of professionals involved in their care and assumes that the physician in the case is directing the medical care of the patient. Dr. Lee stated that a well defined system of accountability for medical care of the patient is essential for patient

protection in general, but particularly in the office based setting because these settings are generally not regulated by any state or federal agency so it becomes paramount in those settings. The Board's original wording, controversial as it is, unambiguously identifies to the patient and physician, the physician is accountable for the medical care of the patient. This kind of clarity in our rule making policy or language adds to the line of responsibility for medical care. This is a major step forward in this Board's advocacy for patient safety and protection. Dr. Lee recommended to the Subcommittee to stay with the original language that was approved by the Board in their previous meeting.

Dr. Krishna stated that the proposed language "the physician and the health care professional" should be included. He also stated that the supervising physician is still responsible for the health care professional because the statute clearly states that the physician is responsible. When the CRNA administers the anesthesia, it is usually under the ownership of the physician, so the surgeon or the physician is responsible. Dr. Krishna stated that adding "the physician *and* the health care professional" will clearly define who is responsible.

Dr. Lee stated that adding in "or" is very ambiguous and adding "and" is less ambiguous, but either language is still ambiguous from a patient and public stand point as to who is responsible. Dr. Lee also stated the Board's job is to make it very clear to the public who walks into an office based setting to know that the physician, no matter who he/she uses to do any work, is responsible for that professional.

Dr. Martin stated that as a Board, our responsibility is to truly protect the patient and the public. Dr. Martin stated that the Rules will make it clear to all parties "who" is responsible. He suggested coming up with guidelines or a substantive policy statement that can be put on the website and make it clear to not only the patient and the public, but the physician community as well.

Dr. Martin asked whether the language at the end of the sentence, "than what was intended by the physician" should be changed to include "and the health care professional." Dr. Lee suggested leaving it as "what was intended." Dr. Martin asked the present stakeholders if that would be agreeable. Ms. Wojnakowski, Ms. Connell, and Dr. Borsand agreed. Dr. Mueller stated that in an October 2006 letter submitted to the Subcommittee the ASA asked for clear language that stated the physician be prepared to rescue the patient that moves into a deeper than intended level of sedation. Dr. Mueller stated that for reasons that have been explained the Board was not willing to include that explicit unambiguous language that capability of the rescue had to be there. Dr. Mueller also stated that the ASA was already uncomfortable with the loose language that is defining the whole rescue responsibility. He also stated that determination of the planned depth of sedation, moderate or minimal is a key part and it needs to be very clear the physician is responsible for that determination. Dr. Mueller stated that he felt that "what was intended by the physician and the health care professional" would be appropriate for the rescue process should that be necessary, but determination of how deeply the patient is going to be sedated is a medical decision and needs to be made by the physician.

Dr. Krishna stated that by adding "for the physician and the health care professional administering," or "a deeper sedation than what was intended by the physician and the health care professional" at the end both will be held responsible but the ultimate responsibility is on the physician. Dr. Mueller stated he is comfortable with the words "intended by the physician."

Ms. Wojnakowski commented that the statutory language that governs the practice of the nurse anesthetists states that a nurse anesthetist does work under the direction and presence of a physician. This direction is not defined. She also stated that when the nurse anesthetist is engaged to provide anesthesia services for a physician, that physician requests a certain anesthetic, mild, moderate, or deep sedation, but the physician does not prescribe to the anesthetist what specific drugs are to be administered to achieve that anesthetic. It is within the training, the education, the credentialing, and the statutory language that the anesthetist is to make those choices. Ms. Wojnakowski stated that by including the language "physician and health care professional" would then hold whomever is engaging in that activity in that office responsible within their scope of practice. She also stated that the most restrictive language in this rule is the previous two statements in this section that hold the physician wholly responsible for ensuring that every person in his office has the appropriate education, experience, and credentialing to provide said services and is not practicing outside of their scope of practice. She stated that by adding "and health care professional" holds every person in that office responsible for ensuring that they are proficient and able to fulfill their scope of practice. Dr. Krishna stated that as long as both words are included they are all held responsible.

Dr. Lee suggested adding "intended by the physician and health care provider within their scope of practice." Dr. Martin again asked the stakeholders if Dr. Lee's recommendation to state "that was intended by the physician and the health care professional within their scopes of practice" would be agreeable. Ms. Wojnakowski, Ms. Connell, and Dr. Borsand agreed. Dr. Mueller did not agree. Ms. McGrane added that the term "scope of practice" is not defined in the Rule and would need to be defined if the Subcommittee chose to use it.

Dr. Mueller stated it is the physician who determines the depth of sedation. He also stated that the rescue process is the core issue of office procedures and it is a public safety issue that the physician bears full weight of the responsibility. Dr. Mueller stated that, with that as a core concern, he can not agree to "and health care professional" being included.

Dr. Lee stated that the first point of the sentence addresses the role of who does the rescuing and the last portion “as intended by the physician” addresses the question of who is prescribing the anesthetic. Dr. Martin stated that it is more stringent in terms of public safety if the sentence ended after “by the physician.” Dr. Lee stated that it would be more unambiguous if read “as intended by the physician.”

MOTION: Dr. Krishna moved to accept Office Based Surgery Rule R4-16-702(A)(3)(d) as amended.
SECONDED: Dr. Lee
VOTE: 3-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Office Based Surgery Rule R4-16-702(A)(3)(d) now reads as follows:

For the physician and *health care professional* administering the sedation to rescue a patient after sedation is administered and the patient enters in to a deeper state of sedation than what was intended by the physician.

The meeting adjourned at 9:26 a.m.

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Amanda J. Diehl, Deputy Executive Director